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Evidence (Quick Study: Law)

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Quick Study LAW EVIDENCE

BASED ON FEDERAL RULES OF EVIDENCE

Blue text = admissible Red text = inadmissible

JUDICIAL NOTICE

1. **Judicial notice** is the acceptance of what is true without the necessity of formal proof (i.e., such as sworn testimony or documentary evidence).

2. May be taken for the first time on appeal.

LEGISLATIVE FACTS

1. **Advisory committee's notes** distinguish legislative facts from adjudicative facts.

2. **Legislative facts** are those relevant to "legal reasoning" and the "lawmaking process," include statutory law and judicial decisions.

ADJUDICATIVE FACTS

1. **Adjudicative facts** are the facts of the particular case.

A. Who did what, when, where, how, with whom, and with what motive.

B. Facts that normally would go to the jury, except that judicial notice may be taken because no reasonable person could dispute them (because they are generally known or come from sources "whose accuracy cannot be reasonably questioned" (e.g., the reliability of radar speed tests, the leading cause of death)).

2. **Federal Rules of Evidence (FRE)** govern only adjudicative facts.

MANDATORY JUDICIAL NOTICE

1. Facts that are so generally known that they cannot reasonably be disputed (adjudicative), must be reported by a party (201)(a).

A. Meaning of legal expressions (legislative).

B. Meaning of English words and phrases (legislative).

C. Federal and state law and official regulations of the federal state or federal government (legislative).

D. Federal and state rules of procedure (legislative).

2. **Items 3-5** reflect the court's reasoning process and are not judicial notice (201)(a) note.

PERMISSIVE JUDICIAL NOTICE

1. On its own, the court may take judicial notice of certain matters (201)(b).

A. Facts that are not reasonably subject to dispute and are capable of accurate determination from indisputable sources, such as almanacs and encyclopedias (e.g., time of sunset on a particular date).

B. Facts that are such common knowledge locally that they cannot be reasonably disputed (e.g., the location of a certain road).

C. Records of state or federal courts.

D. Laws of other states or nations.

E. Administrative regulations and orders.

2. FRE requires judicial notice only to adjudicative facts (locally (items A-C)).

EFFECT OF JUDICIAL NOTICE

1. **Case law:** Binding on jury to accept as true and as fact (adjudicative notice).

2. **Critical case:** Jury instructed that it may, but is not required to, accept any fact judicially noticed as conclusive (201)(g)).

JUDICIAL RULINGS

RULINGS ON EVIDENCE (103)

1. **Erroneous** only if **substantial rights** of party is affected (see U.S.S. (Hanson) and the nature of the error was called to the attention of the judge (but subject to those of discretion of the trial court)).

A. **Concession** for purpose is removed only if objection seriously affects trial (Johnson, U.S.).

B. **Standby objection** or offer of proof to preserve record for appeal, no need to move claim of error after the court's ruling (201)(e)).

C. The objection is necessary if "plain error" or fundamental error that affects outcome of verdict.

D. **Waiver:** Trial error is not harmless when it affects verdict (27 Neal v. McAmis).

1. Suppression of material evidence reversible to defendant (United States v. Agurs).

2. Prosecution withholding incriminating evidence violates Due Process "where the evidence is material either to guilt or to punishment" (Brady v. M.D.).

3. **Jury cases:** To prevent inadmissible evidence (e.g., confessions) from being suggested to the jury by the lawyer.

PRELIMINARY QUESTIONS (104)

1. The court determines questions regarding the following:

A. Qualification to be a witness.

B. Whether privilege exists.

C. Admissibility of evidence.

2. The court should admit evidence conditionally subject to the introduction of fact to establish the admissibility of the evidence.

3. The court holds hearings outside hearing of jury (usually in pretrial session to suppress confessions), as well as hearings on other preliminary matters, or justice requires.

BURDENS OF PROOF (301)

Burden of proof consists of burden of production (going forward with evidence) and the burden of persuasion.

BURDEN OF PRODUCTION: "BURDEN OF GOING FORWARD"

1. Provide evidence to show fact exists.

A. Must be sufficient to enable reasonable juror to support a verdict for the party with the burden (i.e., making a prima facie case).

B. Without evidence, fact does not go to jury; the court would direct a verdict against the party who bears the burden.

2. Burden is on party who asserts fact; burden may shift once party has satisfied burden of going forward with evidence.

3. **Presumptions:** Deductions that the trier of fact is required to draw from the evidence in the absence of a contrary showing; a presumption shifts the burden to the opposing party to disprove the presumed fact.

A. **Rebuttable presumptions** place the burden of going forward with the evidence on the opposing party, or a directed verdict is entered against it.

B. If the opposing party meets its burden of going forward with the evidence, the case goes to the jury or judge.

C. If the opposing party does not meet its burden, a directed verdict is entered against it.

D. **"Resting burden" theory** (applicable here).

1. A presumption is not evidence but rather a **preliminary assumption of fact** that disappears after the introduction of sufficient evidence to rebut a contrary finding.

2. Unlike the theory, the burden of persuasion is in the existence of a fact since where it was at the beginning.

C. **Conclusive presumptions:** Rules of substantive law that cannot be rebutted by producing evidence to the contrary.

BURDEN OF PERSUASION

1. **Preval** legal sufficient evidence to persuade trier of fact on all issues; burden on plaintiff to prove the allegations in the complaint, and burden on defendant to prove all affirmative defenses; burden does not shift.

2. **Standards of proof:**

A. **Preponderance of evidence:** Fact at issue is more probable or likely to exist than not to exist.

B. **Clear and convincing evidence:**

1. Existence of fact at issue is highly probable or reasonably certain.

2. Higher standard than preponderance of evidence.

C. **Beyond a reasonable doubt:**

1. Sufficient evidence to overcome presumption of innocence of defendant.

2. Standard used in criminal cases.

D. The court will instruct jury as to which party has burden.

KINDS OF PROOF

DIRECT EVIDENCE

1. **Proves a proposition directly;** goes directly to material issue without inference (e.g., eyewitness testimony on issue of who killed victim, i.e., eyewitness saw defendant shoot victim).

CIRCUMSTANTIAL EVIDENCE

1. **Tends to prove issue indirectly** through inference; evidence of a collateral fact from which, alone or in conjunction with other facts, existence of a material or ultimate fact can be inferred (e.g., on issue of who killed victim, defendant is seen standing over victim's body holding a gun to his/her head).



Synopsis

In both civil and criminal cases, evidence must be introduced to prove a case, but as in all law, it can only be introduced if it passes certain tests. Is a statement hearsay? Are there exceptions to hearsay rules? What kinds of character evidence are acceptable, and when? Who has the final say as to what evidence can be introduced? The admissibility of evidence can win or lose a case, so don't be caught in the dark; with our newly updated and expanded Evidence guide, color-coded text highlights admissible and inadmissible evidence in our handy, 3-panel format.

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Customer Reviews

What BarCharts are NOT: a comprehensive study guide. You cannot do well on a law school exam or bar exam relying solely upon BarCharts. That is not their purpose. What BarCharts ARE: a condensed overview of the black letter law. Use them as a quick reference to understand the material during the semester. Use them as a REVIEW of the material you (should) have already studied for the exam. In law school, BarCharts were the last thing I skimmed over before taking an exam. It's a good refresher. Same with the bar exam. I skimmed over my BarCharts both nights before the exam.

This is a great study tool for Evidence. It covers the basics of what you will need to know for the class and the bar exam. I would recommend learning everything on this chart early in the class so you will not have to cram. However, if you have waited until the last minute to start preparing for the final, this chart will help you learn the basics.

Great product!!!!

Purchased to help with the paralegal program I'm doing. A great go to for an overview. Very happy with them!

I'm studying for the bar. This is a great way to refresh before tackling practice exams and essays?

Excellent overview of evidence. I would not be getting through class if it wasn't for this chart.

very helpful in course full of rules, exceptions to the rules and exceptions to the exceptions

In a nutshell format. Good information of yhe Federal rules. Worth your while.

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